

Message Text

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ACTION ARA-06

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FM AMEMBASSY BRASILIA

TO SECSTATE WASHDC IMMEDIATE 8635

AMEMBASSY GENEVA IMMEDIATE

C O N F I D E N T I A L BRASILIA 2783

LIMDIS

E.O.11652: GDS

TAGS: EFIS, PLOS, PFOR, BR

SUBJECT: LEGAL CONSEQUENCES OF SHRIMP VESSEL SEIZURE

GENEVA PASS CLINGAN

REF: STATE 79224

1. IN ORDER TO MAKE CLEAR TO GOB THAT OUR PURPOSE IS TO PROTECT OUR LOS POSITION AND TO ENSURE THAT US POSITION ON LIMITS OF AGREEMENT NOT BE MISUNDERSTOOD, WE HAVE SOME MODIFICATIONS AND ADDITIONAL LANGUAGE TO SUGGEST FOR INCORPORATION INTO TEXT OF DEPARTMENT'S DRAFT. AMAJOR CHANGE IS NEW THIRD PARAGRAPH AT BEGINNING OF NOTE, WHICH IS INTENDED TO PUT OUR PROTEST INTO CONTEXT OF HISTORY OF PAST SHRIMP AGREEMENT NEGOTIATIONS AND REMIND GOB OF UNDERLYING PURPOSE OF AGREEMENTS TO AVOID JURISDICTIONAL CONFLICT (THIS NEW PARAGRAPH IS LANGUAGE DRAWN FROM 1972 MCKERNAN STATEMENT AT SENATE FOREIGN RELATIONS SUBCOMMITTEE HEARINGS). OTHER CHANGES MODIFY THE TONE SOMEWHAT BUT NOT THE SUBSTANCE. THE REORGANIZATION OF OF THE NOTE IS INTENDED TO BRING OUT AS CLEARLY AS POSSIBLE RATIONALE OF US POSITION, WHICH WE BELIEVE WILL TAKE THE GOB ABACK. IN ORDER TO MAINTAIN TONE OF DEMARCHE AS
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INDICATED REFTTEL, EMBASSY BELIEVES PROTEST SHOULD BE CONVEYED

VIA THIRD NOT FIRST PERSON NOTE.

2. BEGIN TEXT OF REVISED DRAFT OF NOTE:

THE EMBASSY HAS THE HONOR TO REFER TO THE FOREIGN MINISTRY'S NOTE . . . OF APRIL 3 AND TO THE COMMUNICATIONS RECEIVED BY THE U.S. CONSUL IN BELEM FROM THE BRAZILIAN NAVY AND SUDEPTE CONCERNING THE ARREST AND SEIZURE OF TWO U.S. SHRIMP FISHING VESSELS.

IT IS THE UNDERSTANDING OF THE GOVERNMENT OF THE U.S. THAT THE GOVERNMENT OF BRAZIL CONSIDERS THE TWO VESSELS, "YOUNG'S" AND "TINA MARIE," TO HAVE VIOLATED THE US-BRAZILIAN AGREEMENT CONCERNING SHRIMP, SIGNED ON MARCH 14, 1975, BY FISHING IN WATERS OUTSIDE THE AREA DELINEATED BY THE TERMS OF ARTICLE I OF THE AGREEMENT. IN THIS CONNECTION, SUDEPE HAS INFORMED THE U.S. CONSUL THAT CERTAIN QUANTITIES OF SHRIMP AND SMALL FISH WERE CONFISCATED IN CONFORMITY WITH ARTICLE V, PARAGRAPH 5 OF THE AGREEMENT.

IN 1972, AND AGAIN THIS YEAR, THE GOVERNMENTS OF THE U.S. AND BRAZIL RECOGNIZED THE DESIRABILITY OF CONCLUDING AN AGREEMENT CONCERNING THE SITUATION OF THE SHRIMP FISHERY OFF NORTHEASTERN BRAZIL IN ORDER, AMONG OTHER THINGS, TO AVOID A POTENTIAL CONFLICT ARISING FROM THE DIFFERING JURIDICAL POSITIONS OF THE TWO GOVERNMENTS THAT COULD HAVE PROVED DETRIMENTAL TO HARMONIOUS RELATIONS BETWEEN THE TWO COUNTRIES. THE AGREEMENTS SIGNED IN MAY 1972, AND ON MARCH 14 OF THIS YEAR, WERE THE RESULT OF THE JOINT SEARCH BY THE TWO GOVERNMENTS FOR A FORMULA THAT SATISFACTORILY PROTECTS THE FISHERY INTERESTS OF BOTH COUNTRIES, WHILE ALSO SUCCESSFULLY AVOIDING PREJUDICE, BOTH IN FORM AND IN FACT, TO THE JURIDICAL POSITIONS OF THE TWO PARTIES.

INASMUCH AS THE RESPECTIVE JURIDICAL POSITIONS OF THE TWO GOVERNMENTS HAVE NOT BEEN AFFECTED, THE U.S. CONSIDERS THAT THE APPLICABILITY OF THE CURRENT AGREEMENT -- AS THAT OF ITS PREDECESSOR, THE 1972 AGREEMENT -- IS LIMITED TO AN AREA CAREFULLY DEFINED IN ARTICLE I, WHICH READS, IN PART, AS FOLLOWS:

"THE AGREEMENT APPLIES. . . IN AN AREA OF THE BROADER REGION IN WHICH THE SHRIMP FISHERIES OF THE TWO PARTIES ARE CONDUCTED, HEREINAFTER REFERRED TO AS THE 'AREA OF AGREEMENT', . . ."
IN THE U.S. VIEW, IN ADDITION TO ARTICLE I, THIS READING OF THE AGREEMENT IS ALSO SUPPORTED, INTER ALIA, BY THE PREAMBLE, WHICH RESTATES THE U.S. JURIDICAL POSITION, AND BY THE PROVISIONS
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OF ARTICLE IX.

WITH RESPECT TO THE AFOREMENTIONED ARRESTS AND SEIZURES, THE BRAZILIAN NAVY REPORTED THE LOCATION OF THE TWO VESSELS AS BEING MORE THAN 300 MILES OUTSIDE THE AGREEMENT AREA AS DEFINED IN ARTICLE I. ACCORDING TO THE NAVY REPORTS, THE TWO VESSELS WERE SIGHTED SOME 22 NAUTICAL MILES AND SEIZED SOME 18 NAUTICAL MILES FROM THE COAST.

IN THE LIGHT OF THESE CONSIDERATIONS, THE GOVERNMENT OF

THE UNITED STATES WISHES TO ADVISE THE GOVERNMENT OF BRAZIL
THAT:

A. UNDER INTERNATIONAL LAW THE GOVERNMENT OF THE UNITED STATES DOES NOT CONSIDER ITSELF OBLIGATED TO RECOGNIZE TERRITORIAL SEA CLAIMS OF MORE THAN 3 NAUTICAL MILES NOR FISHERIES JURISDICTION OF MORE THAN 12 NAUTICAL MILES FROM THE COAST.

B. IT IS THE POSITION OF THE GOVERNMENT OF THE UNITED STATES THAT THE TWO VESSELS WERE SEIZED WHILE ON THE HIGH SEAS WHERE ALL NATIONS ENJOY FREEDOM OF FISHING IN ACCORDANCE WITH INTERNATIONAL LAW.

C. NO VIOLATION OF THE AGREEMENT WAS INVOLVED IN THE OPERATIONS OF THE TWO VESSELS, WHICH WERE CONDUCTED OUTSIDE THE AREA OF AGREEMENT AS DEFINED IN ARTICLE I, THE ONLY AREA TO WHICH THE AGREEMENT HAS ANY RELEVANCE AS PROVIDED THEREIN, AND

D. THE GOVERNMENT OF THE UNITED STATES DOES NOT CONSIDER THAT THE AGREEMENT IN ANY WAY AFFECTS THE RIGHT OF THE UNITED STATES VESSELS TO FISH IN ANY OTHER AREA OF THE HIGH SEAS.

THE GOVERNMENT OF THE UNITED STATES CONTINUES TO CONSIDER THE CURRENT BILATERAL AGREEMENT CONCERNING SHRIMP A USEFUL AND CONSTRUCTIVE ARRANGEMENT MUTUALLY BENEFICIAL TO BOTH COUNTRIES CONSISTENT WITH THIS VIEW, THE GOVERNMENT OF THE U.S. REAFFIRMS ITS INTENTION, IN ACCORDANCE WITH THE EMBASSY'S NOTE NO. 94 OF MARCH 14, 1975, TO MAKE EVERY EFFORT TO ENCOURAGE THE VOLUNTARY COMPLIANCE OF ITS INDUSTRY WITH THE PROVISIONS OF THE AGREEMENT PENDING ITS ENTRY INTO FORCE AS PROVIDED IN ARTICLE XI.
END TEXT OF REVISED NOTE.

3. EMBASSY REQUESTS DEPARTMENT'S AUTHORIZATION TO DELIVER ABOVE NOTE IN ACCORDANCE WITH INSTRUCTIONS PARA 9 REFTEL.

4. IN RESPONSE TO QUESTION ON REASONS FOR CONFISCATION OF CATCH (PARA 2 REFTEL), NAVY IN BELEM INFORMED CONSUL THAT
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CATCH WAS TAKEN BECAUSE BOATS WERE FISHING OUTSIDE AGREEMENT AREA. FOREIGN MINISTRY HAS ALSO CONFIRMED THIS EXPLANATION.

5. EMBASSY ASSUMES DEPARTMENT IS INFORMING INDUSTRY THAT DELIVERY OF NOTE WILL JOIN JURIDICAL ISSUE WITH RESULT THAT GOB WILL HENCEFORTH APPLY SEVERE PENALTY PROVISIONS OF ITS OWN NATIONAL LAWS. EMBASSY ALSO BELIEVES DEMARCHE LIKELY TO RESULT IN STEPPED-UP SURVEILLANCE BY BRAZILIAN NAVY.
CRIMMINS

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